

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN A. and EVELYN FLAM

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year (x) or Period (s) 1973 :

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of April , 1977 , she served the within
Notice of Decision by (certified) mail upon Marvin A and Evelyn
Flam (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Marvin A. Flam
365 Wastons Terrace
Ridgewood, New Jersey 07450
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

26th day of April , 1977.

Bruce Batchelor

Janet Mock



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

April 26, 1977

TELEPHONE: (518) **457-1723**

Mr. and Mrs. Marvin A. Flam
365 Wastons Terrace
Ridgewood, New Jersey 07450

Dear Mr. and Mrs. Flam:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~(x)~~ 690 of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
MARVIN A. and EVELYN FLAM :
for Redetermination of a Deficiency or for :
Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year 1973.:
DECISION

Petitioners, Marvin A. and Evelyn Flam, residing at 365 Wastons Terrace, Ridgewood, New Jersey 07450, have filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1973 (File No. 13-2607464).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on September 17, 1976 at 2:45 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. Petitioner, Marvin A. Flam, appeared pro se and for his wife, petitioner, Evelyn Flam. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

ISSUE

Whether or not petitioners, Marvin A. and Evelyn Flam, paid over to the Income Tax Bureau withholding taxes due from Tybos, Inc.

FINDINGS OF FACT

1. On January 27, 1975, the Income Tax Bureau issued two Statements of Deficiency, one against each of the petitioners, Marvin A. and Evelyn Flam, imposing a penalty equal to the amount of New York State withholding taxes due from Tybos, Inc., upon the grounds that they were persons required to collect, truthfully account for and pay over said taxes and that they willfully failed to do so. In accordance with the aforesaid Statements of Deficiency, it issued two Notices of Deficiency in the amount of \$114.00 each, one against Marvin A. Flam and two others against Evelyn Flam.

2. In support of their position, petitioners, Marvin A. and Evelyn Flam, presented the following:

a. A copy of a personal money order, #098197, dated June 13, 1974, drawn on the Commercial Trust Company of New Jersey in the amount of \$114.00 made payable to the New York State Department of Taxation and Finance.

b. A copy of the aforesaid personal money order which indicated that it was cashed and deposited to the account of the Comptroller, State of New York-Income Tax Section.

c. A letter from the Commercial Trust Company of New Jersey which states that the endorsement on the back of the aforesaid personal money order indicated that it was deposited to the account of the Comptroller, State of New York-Income Tax Section.

3. The aforesaid personal money order had been inscribed prior to its submission, with the notation "case # L4000935-Tybos"

in the left-hand corner of its face. The case number, L4000935, was obtained by Tybos, Inc. from a subpoena issued to it by the Department of Taxation and Finance, White Plains District Officer, Warrant and Collection Section in reference to withholding taxes due.

4. The Income Tax Bureau does not have a record of such a payment and is unable to acknowledge receipt of the aforesaid personal money order submitted by Tybos, Inc.

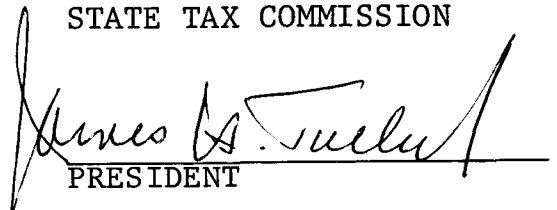
CONCLUSIONS OF LAW

A. That petitioners, Marvin A. and Evelyn Flam, have sustained the burden of proof and that the Income Tax Bureau had received and deposited the personal money order submitted by Tybos, Inc. in payment of the outstanding withholding taxes due.

B. That the petition of Marvin A. and Evelyn Flam is sustained and the Notices of Deficiency issued on January 27, 1975 are cancelled.

DATED: Albany, New York
April 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER